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In the Supreme Court of the United States

OCTOBER TERM, 1960

ELMER M. HARRIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ARCHIBALD COX,
Solicitor General,
Department of Justice, Washington 25, D.C.

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 1018

ELMER M. HARRIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The judgment of the court of appeals was entered on December 27, 1960, and its opinion is reported at 285 F. 2d 85. After denial of a petition for rehearing by the court of appeals, Mr. Justice Black extended the time for filing a petition for a writ of certiorari to June 3, 1961. The petition for a writ of certiorari was not filed until June 5, 1961, and is therefore out of time under Rule 22–2 of the Rules of this Court.

There is no occasion for this Court to waive its rules in this case. Not only has petitioner shown lack of diligence in failing to meet the time for filing his petition as extended, but, as appears from the petition itself and from the opinion below (Pet. App.

3–7), the petition raises no issue warranting review by this Court.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General

JUNE 1961.